

## HOUSE BILL NO. 666

INTRODUCED BY BERGREN, ROUSH, A. OLSON, WITT, SINRUD, BLACK, MUSGROVE,  
BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING PETITIONS BY ALL PROPERTY OWNERS FOR THE CREATION OF A DISTRICT, APPOINTMENT OF DIRECTORS, AND THE INCURRENCE OF INDEBTEDNESS; CLARIFYING THE EFFECT OF PROTESTS AGAINST A METHOD OF LEVYING SPECIAL ASSESSMENTS; CLARIFYING PROTEST REQUIREMENTS AND ASSESSMENT PROCEDURES FOR CONDOMINIUM PROPERTY; AUTHORIZING THE ISSUANCE OF REVENUE BOND AND SPECIAL ASSESSMENT BOND INDEBTEDNESS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY TO ESTABLISH SUBDISTRICTS; AMENDING SECTIONS 7-13-2204, 7-13-2208, 7-13-2212, 7-13-2215, 7-13-2231, 7-13-2282, 7-13-2302, 7-13-2321, 7-13-2328, AND 7-13-2329, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-13-2204, MCA, is amended to read:

**"7-13-2204. Petition to create water and/or sewer district.** (1) A petition, which may consist of any number of separate instruments, ~~shall~~ must be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by ~~registered voters within the boundaries of the proposed district equal in number to either~~ at least 10% of the registered voters of the territory included in ~~such the~~ the proposed district or by the owners of all of the real property in the district.

(2) When the territory to be included in ~~such the~~ the proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which ~~said the~~ the territory lies. Each of ~~said the~~ the petitions must be signed by at least 10% of the registered voters of the territory within ~~said the~~ the county to be included within ~~such the~~ the proposed district or by the owners of all of the real property included in the proposed district.

(3) ~~Such A~~ A petition to create a water and/or sewer district ~~shall~~ must set forth and describe the proposed boundaries of ~~such the~~ the district and ~~shall~~ pray require that the ~~same~~ district be incorporated under the provisions of part 23 and this part ~~and part 23.~~"

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2       **Section 2.** Section 7-13-2208, MCA, is amended to read:

3       **"7-13-2208. Decision on petition -- election required.** (1) On the final hearing provided for in  
4 7-13-2206, the board of county commissioners shall make any changes in the proposed boundaries within the  
5 county that are considered advisable and shall define and establish the boundaries. The board of county  
6 commissioners may not modify the boundaries in a manner that would exclude from the proposed district any  
7 territory that would ~~be benefited~~ benefit by from the formation of the district. Land that will not, in the judgment  
8 of the board of county commissioners, ~~be benefited~~ benefit by from the district may not be included within the  
9 proposed district.

10       (2) Upon the final determination of the boundaries of the district, the board of county commissioners  
11 of each county in which the district lies shall give notice of an election to be held in the proposed district for the  
12 purpose of determining whether ~~or not~~ the district is to be incorporated. The election must be held in conjunction  
13 with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter  
14 19.

15       (3) An election is not required if the petition for the creation of the district is signed by the owners of all  
16 of the real property in the proposed district. If an election is not held, upon the final determination of the  
17 boundaries of the district, the board of county commissioners of each county in which the district lies shall, by  
18 an order entered on its minutes, declare the territory enclosed within the proposed boundaries as an organized  
19 county water and/or sewer district. The county clerk and recorder shall forward a certified copy of the order to  
20 the secretary of state."

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22       **Section 3.** Section 7-13-2212, MCA, is amended to read:

23       **"7-13-2212. Qualifications to vote on question of creating district.** (1) Except as provided in  
24 subsection (2), ~~no an individual shall be~~ is not entitled to vote at any election under the provisions of part 23 and  
25 ~~this part and part 23~~ unless ~~such the~~ individual possesses all the qualifications required of electors under the  
26 general election laws of the state and is a resident of the proposed district or the owner of taxable real property  
27 located within the county in which ~~he~~ the individual proposes to vote and situated within the boundaries of the  
28 proposed district.

29       (2) An individual who is the owner of ~~such the~~ real property described in subsection (1) need not  
30 possess the qualifications required of an elector in 13-1-111(1)(c), provided that ~~such the~~ elector is qualified if

1 ~~he is~~ registered to vote in any state of the United States and files proof of ~~such~~ registration with the election  
2 administrator at least 20 days prior to the election in which the individual intends to vote."

3  
4 **Section 4.** Section 7-13-2215, MCA, is amended to read:

5 **"7-13-2215. Certificate of incorporation from secretary of state.** (1) Upon the receipt of the certificate  
6 referred to in 7-13-2214(2) or the certified copy of the order referred to in 7-13-2208(3), the secretary of state  
7 shall, within 10 days, issue ~~his~~ a certificate reciting that the district (naming it) has been ~~duly~~ incorporated  
8 according to the laws of the state of Montana. A copy of ~~such the~~ certificate ~~shall~~ must be transmitted to and filed  
9 with the county clerk of the county or counties in which ~~such the~~ district is situated.

10 (2) From and after the date of ~~such a~~ certificate of incorporation from the secretary of state, the district  
11 named ~~therein shall~~ in the certificate must be deemed considered incorporated; with all the rights, privileges,  
12 and powers set forth in part 23 and this part ~~and part 23 and necessarily incident thereto.~~"

13  
14 **Section 5.** Section 7-13-2231, MCA, is amended to read:

15 **"7-13-2231. District to be governed by board of directors.** (1) At an election to be held within a  
16 district under the provisions of part 23 and this part and the laws governing general elections not inconsistent  
17 with part 23 and this part, the district shall elect a board of directors. The election must be conducted by mail  
18 ballot, as provided in Title 13, chapter 19, or must be held in conjunction with the next regular or primary election.  
19 If no electors reside in the district at a time when directors of the district are to be elected, the directors to be  
20 elected must be appointed in a certificate of appointment presented to the board of directors of the district,  
21 signed by the owners of all of the real property in the district, and containing the signed acceptance of the  
22 appointment by all of the directors.

23 (2) The board of directors is the governing body of the district."  
24

25 **Section 6.** Section 7-13-2282, MCA, is amended to read:

26 **"7-13-2282. Hearing on assessment ~~--- who considered owner --- sufficient protest to bar~~**  
27 **~~proceedings.~~** (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose  
28 may adjourn from day to day.

29 (2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the  
30 resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which

the lot, tract, or parcel is located within 2 days after passage of the resolution and not later than ~~the~~ July 15 preceding the county's next fiscal year.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property except as provided in [section 11]. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution of intention is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of assessment described in the resolution of intention. A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment."

**Section 7.** Section 7-13-2302, MCA, is amended to read:

**"7-13-2302. Levy of taxes to meet bond obligations and other expenses.** (1) ~~If from for any cause~~ reason the revenues revenue of the district ~~shall be~~ is inadequate to pay the interest or principal of any bonded debt as it becomes due, exclusive of revenue or special assessment bonded indebtedness incurred pursuant to [section 12] or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors ~~must shall,~~ (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which ~~such the~~ the district is located are required by law to levy the amount of taxes required for county or city and county purposes), furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either ~~of said purposes~~

purpose, together with a description of the lands benefited ~~thereby by the bonds~~, as stated by the board of directors in the resolution declaring the necessity to incur ~~such~~ bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of ~~such~~ the county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, ~~must~~ shall:

(a) until any ~~such~~ bonded debt is fully paid, levy upon the benefited lands ~~so benefited and cause to be collected~~ collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the ..... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and ~~cause to be collected~~ collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment ~~thereof of the bonded debt~~, to be known as the ..... district water and/or sewer tax.

(3) ~~Such taxes~~ Taxes for the payment of any ~~such~~ bonded debt ~~shall~~ must be levied on the property benefited ~~thereby~~, as stated by the board of directors in the resolution declaring the necessity ~~therefor~~ for the bonds, and all taxes for other purposes ~~shall~~ must be levied on all property in the territory comprising the district."

**Section 8.** Section 7-13-2321, MCA, is amended to read:

**"7-13-2321. Procedure to incur bonded indebtedness.** (1) Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in ~~7-13-2331~~ 7-13-2332 or revenue or special indebtedness incurred pursuant to [section 12], it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the electors.

(2) If no electors reside in the district at the time of adoption of the resolution or if the proposition is approved by all of the real property owners in the district to be benefited in a certificate of approval to be presented to the board of directors, the board of directors may incur the bonded indebtedness without an election. The board of directors may by resolution, at times that it considers proper, provide for the form and execution of the bonds and for their issuance."

**Section 9.** Section 7-13-2328, MCA, is amended to read:

**"7-13-2328. Sufficient vote required to issue bonds.** (1) (a) When the board of directors canvasses

1 the vote of a bond election, it shall determine the approval or rejection of the bond proposition as provided in  
2 subsections (1)(b) through (1)(d) after calculating the percentage of qualified electors voting in the bond election  
3 in the following manner:

4 (i) determine the total number of electors of the district who were qualified to vote at the bond election;

5 (ii) determine the total number of qualified electors who voted at the bond election;

6 (iii) calculate the percentage of qualified electors voting at the bond election by dividing the amount  
7 determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

8 (b) When the calculated percentage in subsection (1)(a)(iii) is 40% or more, the bond proposition is  
9 approved and adopted if a majority of the votes are cast in favor of the proposition; otherwise it must be rejected.

10 (c) When the calculated percentage in subsection (1)(a)(iii) is more than 30% but less than 40%, the  
11 bond proposition is approved and adopted if 60% or more of the votes have been cast in favor of the proposition;  
12 otherwise it must be rejected.

13 (d) When the calculated percentage in subsection (1)(a)(iii) is 30% or less, the bond proposition must  
14 be rejected.

15 (2) If the canvass of the vote establishes the approval and adoption of the bond proposition ~~If from such~~  
16 ~~returns it appears that 60% or more of the votes cast on the question at such election were in favor of and~~  
17 ~~assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or~~  
18 ~~times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part~~  
19 ~~thereof~~ the bonds."

21 **Section 10.** Section 7-13-2329, MCA, is amended to read:

22 **"7-13-2329. Sale of bonds.** The board of directors may sell or dispose of the bonds issued pursuant  
23 to 7-13-2321(2) or 7-13-2328 at such times or in such a manner as that it may deem considers to be to the public  
24 interest."

26 **NEW SECTION. Section 11. Protest procedures for property created as condominium --**  
27 **assessment of condominium property.** (1) Whenever property created as a condominium is proposed to be  
28 assessed for costs of an improvement pursuant to 7-13-2280 and if the property is not solely a certain unit in  
29 the condominium, then the owner of the property created as a condominium that is entitled to protest under  
30 7-13-2282 is considered to be the collective owners of all units having an undivided ownership interest in the

1 common elements of the condominium.

2 (2) An owner of property created as a condominium may protest against the method of assessment or  
3 vote at an election of the district only through a president, vice president, secretary, or treasurer of the  
4 condominium owners' association who timely presents to the secretary of the district in accordance with  
5 7-13-2282 the following:

6 (a) a writing identifying the condominium property;

7 (b) the condominium declaration or other condominium document that shows how votes of unit owners  
8 in the condominium are calculated;

9 (c) original signatures of owners of units in the condominium having an undivided ownership interest  
10 in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking  
11 relating to the common elements under the condominium declaration; and

12 (d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium  
13 owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners,  
14 are sufficient to constitute an affirmative vote of the condominium owners' association to protect against the  
15 method of assessment.

16 (3) Each holder of title to a unit of a condominium that is proposed to be assessed for costs of a capital  
17 project is entitled to the passage of the resolution as provided in 7-13-2281, and if the assessments are levied,  
18 assessments must be levied against the units in the condominium as provided in subsection (4).

19 (4) Whenever property created as a condominium is to be subject to special assessments, each unit  
20 within the condominium is considered a separate parcel of real property subject to separate assessment and  
21 the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the  
22 common elements of the condominium. The percentage of the undivided ownership interest must be as set forth  
23 in the condominium declaration.

24  
25 **NEW SECTION. Section 12. Issuance of revenue or special assessment bonds without election.**

26 (1) The board of directors of the district may authorize the issuance of bonds payable from all or a portion of  
27 the revenue of the district or from special assessments levied against benefited property in the district to finance  
28 the acquisition, construction, improvement, or extension of any facilities of the district benefiting all or any portion  
29 of the district for other authorized corporate purposes of the district, to refund bonds issued for those purposes,  
30 to fund a debt service refund for the security of the bonds, to pay interest on the bonds during the estimated

1 period of construction or improvement of facilities, and to pay costs of the bond issuance. Revenue or special  
2 assessment bonds issued under this section may be authorized by a resolution adopted by the board of directors  
3 of the district without need for authorization by the electors. Bonded indebtedness incurred pursuant to this  
4 section may not be secured by the levy of the deficiency tax provided in 7-13-2302 if not submitted to and  
5 approved by the electors of the district.

6 (2) Revenue or special assessment bonds authorized in subsection (1) may be sold as provided in  
7 7-13-2329. The board of directors may, by resolution, pledge to the payment of the revenue bonds or special  
8 assessment bonds all or a portion of the rates, fees, tolls, rents, or other charges afforded by or special  
9 assessments levied in respect of facilities of the district, whether financed with bonds or other available funds  
10 of the district. The pledge may be made on a parity with or with a superior or subordinate lien to the pledge of  
11 the revenue to other bonded indebtedness of the district, subject to any covenants made with owners of  
12 outstanding bonds of the district. The board of directors may also make covenants for the benefit of the owners  
13 of the bonds as provided in 7-13-2301, but the revenue or special assessment bonds may not be secured by  
14 the bond tax levied pursuant to 7-13-2302 or any other taxing powers of the district. The bonds do not constitute  
15 and may not be included as an indebtedness or liability of the district for purposes of any statutory debt limitation  
16 but are subject to the limitations of this section.

17 (3) Bonds may be issued under this section only if:

18 (a) the bonds are issued in the principal amounts and on terms that stipulate that the amount of principal  
19 and interest due in any fiscal year on the bonds and any other revenue or special assessment bonds of the  
20 district and issued under this section do not exceed the amount of the revenue or special assessment pledged  
21 to the payment of the bonds and received in that fiscal year as estimated by the board of directors of the district  
22 in the resolution authorizing the issuance of the bonds; and

23 (b) the final maturity of the bonds is not later than 40 years after the date of issuance of the bonds or  
24 the useful life of the project financed from the proceeds of the bonds, as determined by the board of directors.

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27 **NEW SECTION. Section 13. Establishment of subdistricts.** (1) The board of directors may establish  
28 one or more subdistricts within a district to provide for and finance the cost of water or sewer projects,  
29 improvements, or extensions that would benefit land in the subdistrict but not other land in the district. Before  
30 establishing a subdistrict, the board shall conduct a public hearing on the establishment of the proposed



subdistrict after 10 days' notice published in a newspaper of general circulation in the district. The notice of public hearing must contain a description of the subdistrict and the proposed water or sewer project and its estimated cost. After the public hearing, the board of directors may, by resolution, establish the subdistrict if it finds that it is in the best interests of the owners of the land in the subdistrict and the district wishing to establish the subdistrict, that the subdistrict constitutes all land in the district benefited by the proposed water or sewer project, and that the establishment of the subdistrict and the financing of water or sewer projects for the benefit of the subdistrict will not violate any covenants of the district made with owners of outstanding bonds of the district.

(2) The board shall describe in the resolution establishing the subdistrict the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district and must constitute all of the land in the district benefited by the proposed water or sewer project.

(3) Following the establishment of a subdistrict, the board of directors may undertake and finance water or sewer projects, improvements, or extensions that benefit land in the subdistrict but not other land in the district, as provided in Title 7, chapter 13, parts 22 and 23, including but not limited to the incurrence of bonded indebtedness to finance costs and the levy of special assessments or the imposition of rates and charges, all subject to any covenants made with owners of outstanding bonds of the district. If general obligation bonds are to be issued to finance the costs of the projects, the subdistrict must be treated as the district for the purposes of 7-13-2331.

(4) The powers granted in this section are supplementary to the powers otherwise granted to county water and sewer districts.

**NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 15. Codification instruction.** [Sections 11 through 13] are intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [sections 11 through 13].

**NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 2005.

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